

Lewis Byrd,
Plaintiff.

DOC NO
REC'D/FILED
2018 MAY 18 AM 10:53

CASE NO. 17-CV-191-JDP

v.

PETER OPPENEER
CLERK US DIST COURT
WD OF WI

Brandon Arenz,
Defendant.

Plaintiff's Response to Defendants
Response to Plaintiff's motion to
Dismiss Defendants motion for
Summary Judgment.

MR. Byrd's motion to Dismiss Defendants motion for Summary Judgment should be Granted. Defendant was aware of MR. Byrd's deadline of April 9th 2018 to respond to Defendants motion for Summary Judgment and that the court was not going to grant MR. Byrd any more time after that to respond. Plaintiff asked Defendant for their service records on separate occasions. Defendant made it very clear to MR. Byrd and the court that ALL of the Defendants records were presented. MR. Byrd had a deadline set by the court to respond to Defendants motion for Summary Judgment set for April 9th 2018. MR. Byrd met that deadline. Only after MR. Byrd had filed his response did the defendant 10 day later present new evidence opposing MR. Byrd's response brief. In Defendants response to Plaintiff's motion to compel discovery. Defendant states that they have already fully responded to Plaintiff's motion/demands for discovery. (See Exhibit 1 page 1 number 1), and (Exhibit 2 page 2 numbers 6 and 10) and (Exhibit 3 number 6.) MR. Byrd did ask for these items in his motion for discovery and recieved Defendants Handgun qualifications dated 6.9.14 as part of MR. Byrd's request for service records. No other Handgun or Firearm records were given, (see ~~Ex~~ Exhibit 6.), Plaintiff then

moved for a motion to compel. Defendants responses were that there were NO additional items to produce and that Defendant has fully responded to plaintiffs request for discovery.

Based on Defendants motion to dismiss Plaintiffs motion to compel Discovery being granted on the grounds that Defendant fully produced discovery. MR. Byrd filed his motion in response for Summary Judgment on April 9th 2018 to meet the deadline set for him by the court. Now 10 days after MR. Byrds Filing does the Defendant Now want to bring forth the evidence MR. Byrd has requested before that the Defendant said didn't exist and already made a FULL disclosure of discovery.

Further more Defendant claims that MR. Byrd never requested Defendants Firearms certifications. MR. Byrd did ask for service records of all responding officers in Plaintiffs motion for discovery dated Feb. 5, 2018 (see exhibit 4 page 2 number 4). Defendant responded to this request with Defendants police training and educational certificates, including Defendants Firearms qualifications dated 6-19-14. MR. Byrd was told that no other service records exist and that Defendant has fully responded to Plaintiffs request for discovery. Now after MR. Byrd has made his response does Defendant produce new service records. Service records that MR. Byrd had requested on Feb. 5, 2018. This information should of been produced when MR. Byrd requested it. In Defendants Response to Plaintiffs propose Findings of Facts Defendant admits that the reason the New handgun certificate was not produced to MR. Byrd with the rest of Defendants service records was because it was maintained by a dis municipality. (See Exhibit 5 page 1 number 2 and Exh

Page 2 number 3.) NOT because as Defendant claims Mr. Byrd never requested it. In Defendants unsigned Affidavit Dated April 19, 2018, Defendant again acknowledges Mr. Byrds request for service records and Defendant admits the reason these new service records were not produced at the time of Plaintiffs request was because they were maintained by a municipality other than the city of Hillsboro. NOT because Mr. Byrd never requested them (see exhibit 7). This discovery was in the Defendants full control to produce and they did not. Defendant had ~~more~~ than enough time to produce the service records that Plaintiff requested on Feb. 5, 2018. Defendant even argued with the Plaintiff and the court that no other service records existed and that full discovery was made.

Based on the above Mr. Byrd Humbly and Respectfully ask the court to Dismiss Defendants motion for Summary Judgment. It is clear that the plaintiff has been unfairly prejudiced in his efforts to oppose Defendants motion for Summary Judgment. Mr. Byrd Filed his response to Summary Judgment then Defendants produces a document that may or may not even be authentic that they said never existed in the first place. Mr. Byrd Further more ask the Defendants Summary Judgment be Dismissed with prejudice.

Dated 5/12/18

Signed: Lewis E. Byrd